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**IN THE
COURT OF APPEALS OF INDIANA**

JOHN W. HILL,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 42A05-0603-CR-152
)	
STATE OF INDIANA,)	
)	
Appellee.)	

APPEAL FROM THE KNOX SUPERIOR COURT I
The Honorable W. Timothy Crowley, Judge
Cause No. 42D01-0210-FB-153

January 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Judge

Appellant, John W. Hill, challenges the trial court's revocation of his probation, claiming that his arrest alone is insufficient to support the revocation.

We reverse.

The record reveals that on October 24, 2002, the State charged Hill with manufacturing methamphetamine as a Class B felony. On June 7, 2004, the trial court accepted a plea agreement between Hill and the State. Pursuant to the terms of the plea agreement, the trial court sentenced Hill to ten years incarceration, with four years thereof suspended to probation. Hill began probation on approximately July 6, 2005.¹ On November 14, 2005, the State filed a notice of probation violation which alleged in relevant part:

“That [Hill] ha[d] violated [the] terms of probation as follows:

- (1) Violation of Probation by being arrested in Lake County, Indiana on November 1, 2005 for Count I: Possession of Methamphetamine, Count II: Illegal Drug Labs: Possession or Sale of Precursors, and Count III: Conversion.” App. at 114.

The trial court held a probation revocation hearing on January 19, 2006. At the hearing, James Brewer, Hill's probation officer, testified that he had been informed by officials in Lake County that Hill had been arrested on November 1, 2005, and had received from those officials a copy of the charging information and probable cause affidavit in that case. Copies of these documents were admitted without objection. Although charges had been filed, no initial hearing on the Lake County charges had been held at the time of the probation revocation hearing. The State questioned Officer Brewer, “And you allege in your Notice of Probation Violation that Mr. Hill has violated

¹ Hill signed his probation agreement on July 12, 2005.

his probation terms, is that correct?” Officer Brewer responded, “That is correct.” The State then asked, “And . . . that’s for his arrest in Lake County, is that right?” Officer Brewer answered, “Correct.” Tr. at 69. When asked by the State how Hill’s behavior violated the terms of his probation, Officer Brewer testified:

“Mr. Hill signed the Probation Contract on July 12th, 2005 and the new arrest is a violation of probation, rule number three which states you’re to obey all town, city, county, state and federal laws and ordinances. Any arrest for a violation of law, except for minor traffic offenses, will be considered a violation of your probation and may result in a petition being filed in this Court to revoke your suspended sentence or probation. You must immediately notify your probation officer if you are arrested for the commission of [a] criminal offense.” Tr. at 69-70.

Officer Brewer further testified that Hill did not report his arrest as required. The State then admitted into evidence a copy of the Probation Agreement.

Hill testified and denied having possessed methamphetamine as alleged, claiming that the drugs belonged to his companion when arrested that day. Hill also denied to having admitted to stealing a flashlight as claimed in the probable cause affidavit. Hill never denied that he had been arrested.

After hearing the arguments of counsel, the trial court stated in relevant part:

“As it relates to the probable cause for the filing [of the criminal charges against Hill] *I’m not sure it’s my job to determine on my own that there was probable cause for the arrest and the charging. Apparently a judicial officer in Lake County has already done that because there is a pending case against this gentlem[a]n in Lake County and I’m assuming that, at some point, a judicial officer in that county made a determination of probable cause. My feeling is my job is to determine, based upon the evidence, whether or not Mr. Hill has violated the conditions of his probation, in particular, by being arrested for a violation of law regardless of whether or not he’s ultimately convicted. These cases are always complicated because my nature is to always give an individual the benefit of the doubt. But, in fact, Mr. Hill has been convicted on two prior*

controlled substance felonies and he was I believe this was his third one. He was on probation at the time. He knew . . . and certainly one thing about [Hill] is, is [he]’s not stupid. I mean I’ve come to believe, in my dealings with [Hill], that he’s a very intelligent individual over the time that I’ve dealt with him. If he wasn’t possessing methamphetamine he was certainly in a bad situation on the day this happened and I don’t know whether there was an error in the probable cause affidavit or not but the probable cause affidavit indicates an admission of wrongdoing by [Hill] in stealing a flashlight. I know [Hill] disputes that today during his testimony. My inclination, as I said in dealing with any criminal Defendant, is to give everybody the benefit of the doubt but in a circumstance like this one an individual that has prior controlled substance violations and is arrested while on probation and charged with another controlled substance offense is that I basically think that [Hill]’s exhausted his opportunities for second or third chances. The Court having considered the matter and being duly advised, now determines that the suspended sentence in this particular matter of four years in the Department of Correction be revoked.” Tr. at 82-83 (emphasis supplied).

Hill filed a notice of appeal on February 17, 2006.

Before addressing Hill’s claims, we observe that a defendant is not entitled to probation; instead, such placement is a matter of grace and a conditional liberty which is a favor, not a right. Brabandt v. State, 797 N.E.2d 855, 860 (Ind. Ct. App. 2003). The decision whether to revoke probation is a matter within the sound discretion of the trial court. Id. Further, we are mindful that a probation revocation hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence, and that a violation of a single condition of probation may be sufficient to revoke probation. Id. at 860-61. Upon appeal, we consider only the evidence favorable to the judgment, and we neither reweigh that evidence nor judge witness credibility. Id. at 861. If there is substantial evidence of probative value to support the trial court’s conclusion

that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. Id.

In the present case, Hill claims that the trial court erred in revoking his probation in that the trial court never made a determination that Hill's arrest was reasonable and properly supported by probable cause. It is a well-settled proposition of Indiana law that a mere arrest of the defendant is insufficient to support a revocation of probation. Martin v. State, 813 N.E.2d 388, 390-91 (Ind. Ct. App. 2004) (citing Hoffa v. State, 267 Ind. 133, 135, 368 N.E.2d 250, 252 (1977)). The same is true for the fact that charges were filed against a probationer. Id. at 391. But, if the trial court after a hearing determines that the arrest was reasonable and that there is probable cause to believe that the defendant did indeed violate a criminal law, then revocation of probation is permissible. Johnson v. State, 692 N.E.2d 485, 487 (Ind. Ct. App. 1998) (quoting Gee v. State, 454 N.E.2d 1265, 1267 (Ind. Ct. App. 1983)). Similarly, if the trial court determines that there is probable cause to support the filing of criminal charges, such may be sufficient to support revocation of probation. Martin, 813 N.E.2d at 391 n.3.

Here, we note that the alleged violation of probation in the notice of probation violation was merely Hill's "being arrested in Lake County." This by itself is not a violation of probation.² See Martin, 813 N.E.2d at 390-91; Johnson, 692 N.E.2d at 487; Gee, 454 N.E.2d at 1267; Hoffa, 267 Ind. at 135, 368 N.E.2d at 252. Although it has

² Indeed, if it were otherwise, probationers would be in peril of having their probation revoked at the whim of an arresting officer who might arrest the probationer with or without probable cause. It is for this reason that we require the trial court judge presiding over the probation violation hearing to independently determine whether the arrest was reasonable and supported by probable cause.

been stated that a trial court may revoke probation upon evidence that the defendant violated any single term thereof, see, e.g., Washington v. State, 758 N.E.2d 1014, 1017 (Ind. Ct. App. 2001), this proposition is limited by the cases which state that a trial court may not find that the probationer violated a term of probation that was not alleged in the notice of probation violation. See, e.g., England v. State, 670 N.E.2d 104, 105 (Ind. Ct. App. 1996), trans. denied.

Therefore, regardless of whatever might support the revocation of Hill's probation, the only violation alleged in the notice was his arrest. His arrest, however, does not support revocation of probation. For this reason alone, we could conclude that revocation of Hill's probation was improper. Furthermore, here, the trial court seems to have specifically declined to determine whether or not Hill's arrest, or the filing of criminal charges against him, was supported by probable cause.³ See Tr. at 82-83 (as quoted above). We therefore conclude that the trial court erred when it revoked Hill's probation.

The judgment of the trial court is reversed.

ROBB, J., and BARNES, J., concur.

³ This is not to say that there was no evidence from which the trial court could have concluded that there was probable cause to arrest Hill in the present case. The trial court here simply seems to have declined to make such a determination.